TEO KUN HUAT

v.

PP

HIGH COURT SABAH & SARAWAK, SIBU
TEE AH SING J
[CRIMINAL APPEAL NO: 20-41-13 OF 1997]
30 JUNE 1998

CRIMINAL LAW: *Common Gaming Houses Act 1953 - Section 4A(a) - Whether presumption of 'assisting in public lottery' in s. 11 applied - Whether incriminating exhibits found in the possession of the appellant - Whether incriminating exhibits amounted to lottery tickets and/or documents of 'any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery' - Whether expert must provide reasons for so opining*

The appellant was convicted and sentenced for an offence under s. 4A(a) of the Common Gaming Houses Act 1953 ('the Act'). Based on the facts, a certain canteen was raided by a police party and present at the material time was the appellant and a woman. Certain exhibits were found on the appellant, namely, a booklet (P1), RM3,000 (P3(a)) and a piece of paper with some figures on it (P3(b)). The rest of the incriminating exhs. (P4, P5, P6, P7, P8) were found not on the appellant but on the premises. The appellant appealed against conviction and sentence. Among the issues for consideration were: (i) whether the incriminating exhibits were in the possession of the appellant; and (ii) if they were, whether they were lottery tickets and/or documents of 'any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery'.

Held:

[1] The presumption in s. 11(1) of the Act - that a person found in posession of certain documents shall be presumed until the contrary is proved to be assisting in a public lottery then in progress – arises when there is possession, irrespective of place.

[2] Exhibits P1 and P3(b) were recovered from the pocket of the appellant's pants and shirt respectively. It was clear therefore that the appellant had possession of such exhibits. However, the other incriminating exhibits were found on the premises and there was no evidence adduced by the prosecution as to who is the owner, tenant or occupier of the said canteen premises. Further, the prosecution failed to adduce evidence to show the

relationship of the appellant with the business of the canteen. The prosecution therefore had failed to prove that the other incriminating exhibits were found in the possession of the appellant.

[3] Although exhs. P1 and P3(b) were found in the possession of the appellant, the gaming expert did not give any reason or explanation for his opinion that these were items associated with illegal betting. As such, the magistrate could not form his own judgment that such exhibits were lottery tickets and/or that they were documents of 'any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery'. The prosecution therefore had not proved beyond a reasonable doubt that P1 and P3(b) were lottery tickets and/or documents of any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery. The presumption in s. 11 of the Act that the appellant was 'assisting in a public lottery then in progress' therefore did not arise.

[Appeal allowed.]

Case(s) referred to:
Chean Siong Guat v. PP [1969] 2 MLJ 63 ***(refd)***
Khoo Hi Chiang v. PP [1994] 2 CLJ 151 ***(cit)***
Lee Ching Seng v. PP [1954] 20 MLJ 181 ***(foll)***
PP v. Chew Yoo Choi [1990] 2 MLJ 444 ***(cit)***
PP v. Chieng Yong Tiong [1997] 2 JCR 339 ***(refd)***
PP v. Lee Eng Kooi [1993] 2 CLJ 534 ***(refd)***
PP v. Lee Soon Sian [1993] 2 CLJ 214 ***(refd)***
Teng Boon How v. PP [1993] 4 CLJ 545 ***(cit)***
Wong Liang Nguk (f) v. PP [1953] 19 MLJ 246 ***(foll)***
Wong Miap Long v. PP [1955] 21 MLJ 132 ***(cit)***
Wong Yiap Long & Anor v. PP [1955] 21 MLJ 132 ***(dist)***

Legislation referred to:
Betting Act 1953, ss. 12, 14
Common Gaming Houses Act 1953, ss. 4(1)(a), 4A(a), 11, 16(1), 17, 18(c), 19, 20, 22(3)

For the appellant - Orlando Chua; M/s Wong, Orlando Chua & Co
For the respondent - Awang Armadajaya Awang Mahmud DPP

Reported by Mariette Peters-Goh & S Dharmendran

JUDGMENT

Tee Ah Sing J:

Teo Kun Huat ('the appellant") was on 18 November 1996 convicted of an offence under s. 4A(a) of the Common Gaming Houses Act 1953 ("the Act") and was sentenced to one day's imprisonment and a fine of RM25,000 in default six months' imprisonment.

The charge against the appellant was as follows:

> "That you, on the 15th day of August, 1994, at about 1150 hours, at the canteen of Dewan Masyarakat Kapit, in the District of Kapit, in the State of Sarawak, did assisting in the carrying on of a public lottery, to wit, illegal 4 digits character lottery and that you have thereby committed an offence punishable under Section 4A(a) of the Common Gaming Houses Act, 1953.

This is an appeal against the conviction and sentenced.

The learned counsel for the appellant dealt with grounds 2(a), (g), (h) and (i) of the petition of appeal together. He submitted that the undisputed facts were that on the day in question the canteen at the Civic Centre Kapit was raided by a police party and present at the material time were the appellant and a woman. The canteen was open to members of the public for food and drink. It is also undisputed that the appellant was allegedly sitting at the counter.

According to the police exhs. P1, P3(a) and (b) were found on the person of the appellant. The learned magistrate at p. 52 bottom line was of the view that the same was not challenged by the defence. In p. 14 of the appeal record the defence did challenge.

The rest of the incriminating exhibits were found somewhere from the counter. It is pertinent to note that no description as to where precisely those exhibits were found was given by the prosecution.

He submitted that there was no evidence as to which side of the counter the appellant was seated. It could be either the outside or the inside of the counter. The most favourable construction ought to be given to the appellant. There was no evidence led as to the appellant's connection with the canteen. And further the unknown identity of the woman who was not searched or interviewed. He also submitted that there is no specific finding by the learned magistrate that the exhs. P1, P3(a) and (b) were found on the person of the appellant despite the challenge by the defence.

The element of possession is not presumed neither is the of knowledge in so far as the Act is concerned. The prosecution has not proved exclusive occupation of the canteen. The prosecution had also not proved that the appellant was the occupier of the said canteen and therefore cannot be said to be in control of the offending exhibits.

He submitted that the learned magistrate had erred in that he had equated knowledge with possession. The prosecution through PW4 had tried to implicate the appellant by purportedly establishing that when the police raided the said canteen the appellant was writing something at the counter.

It is undisputed that no pen or any writing instrument was seized or noted by the police. Nor was there evidence that the appellant had disposed off the same. This can be seen from the search list (P9). The prosecution could not pin-point as to what the appellant was purportedly writing. He submitted that it was a mere fabrication. He also submitted that the grave discrepancy between the evidence of PW1 and PW4 ie, whether the appellant was merely sitting at the counter or writing something is of significance. If the appellant was merely sitting at the counter, it would have meant either he was a customer or a mere visitor or the person in charge. And if he was writing something it might mean he had something to do with the exhibits.

He submitted that it would raise some doubt as to the integrity of the raiding party as to the exact whereabouts of P1, P3(a) and (b). Obviously one of the two witnesses was not telling the truth. He submitted that it was a grave discrepancy not a minor difference as found by the learned magistrate. The learned magistrate failed to follow the case of *Public Prosecutor v. Lee Eng Kooi* [1993] 2 CLJ 534.

In respect of grounds 2(b) and (c) of the petition of appeal as the prosecution has contravened ss. 16, 17 and 18 of the Act, the defence should not be called. The case of *Wong Yiap Long & Anor v. Public Prosecutor* [1955] 21 MLJ 132 was cited. He submitted that Wong Yiap Long's case is still good law and has not been overruled as late as 1994 when it was considered in the case of *Khoo Hi Chiang v. Public Prosecuto*r [1994] 2 CLJ 151; [1994] 1 AMR 323.

In respect of ground 2(d) the case of *Public Prosecutor v. Lee Soon Sian* [1993] 2 CLJ 214 was cited and distinguished. In our case the appellant signed as the owner of the offending exhibits. It was submitted that this is a confession and that since no caution had been administered the same becomes inadmissible as the appellant was under arrest when he signed the search list. In support the case of *Public Prosecutor v. Chew Yoo Choi* [1990] 2 MLJ 444 was cited. Further there is no proof whatsoever as to the connection of the appellant with the canteen. (See *Public Prosecutor v. Chieng Yong Tiong* [1997] 2 JCR 339).

In respect of grounds 2(e) and (f) the case of *Wong Wiew Hock v. Public Prosecutor* [1997] 3 CLJ 255 was cited. In respect of the finding of the learned magistrate at p. 53 of the appeal record he submitted that the learned magistrate had construed or equated silence with guilt and this has gravely prejudiced the appellant. In support the case of *Teng Boon How v. Public Prosecutor* [1993] 3 MLJ 553 was cited.

The learned deputy public prosecutor ("the DPP") submitted that the evidence of PW1 and PW4 clearly shows that the exhs. P1, P2, P3(a) and (b) have been proved beyond reasonable doubt found on the person of the appellant. On the issue of the woman found at the canteen the learned DPP submitted that the evidence of PW1 and PW4 did not show in any way that the woman has anything to do with the appellant or the counter of the canteen. The learned DPP submitted that the failure to call her to testify have not in any way prejudiced or damaged the case for the prosecution.

The learned DPP contended that the information received by PW1 as in his examination-in-chief is sufficient for the purpose of s. 16(1) of the Act. This is also clearly stated in s. 22(3) of the Act. This concerns the information received and the informer and it suffice to show the intention of the legislature as to the protection of the informer or the exact information received. And it is for this reason the learned DPP submitted that the "and" in between "written information", "and after any inquiry" in s. 16(1) to be read as "or" as otherwise it would be at variance with s. 18(c) or s. 22 of the Act. He distinguished the case of *Wong Yiap Long* cited by the appellant as it did not discuss on the interpretation of ss. 12 and 14 of the Betting Act. It also did not discuss the protection on any informers.

In respect of the signature of appellant in P9 the learned DPP submitted that the form is for the purpose of preventing any abuse by the raiding party and to prevent the suspect in a raid from claiming that he was denied of any right to claim later of any exhibits seized in the event no charge is being preferred against him and in the case of acquittal. The handwritten part clearly states that it is an acknowledgment of the items removed. He submitted that nowhere in the acknowledgment can one infer ownership or possession. He also submitted that it is not a confession. He submitted that the case of *Public Prosecutor v. Chieng Yong Tiong* is not applicable to the facts of the present case as P1, P2, P3(a) and (b) were found on the person of the appellant.

The learned magistrate was correct in finding that the signature on the search list as an acknowledgment and not as a confession.

I shall first deal with the case of *Wong Yiap Long v. Public Prosecutor* [1955] 21 MLJ 132 cited by the learned counsel for the appellant.

The learned counsel for the appellant had relied on the case of *Wong Yiap Long v. Public Prosecutor* [1955] 21 MLJ 132 to support his contention that since ss. 16, 17 and 18 of the Act have not been complied with the defence should not be called.

In my view, the report of *Wong Yiap Long's* case *(supra)* is very scanty; no authorities appear to have been cited; the facts are not fully set out; nor is it clear whether in that case any of the presumptions under the Betting Ordinance, 1953 were relied upon, and if so, which.

I am unable to agree with the contention and I do not think that the learned judge who decided *Wong Yiap Long's* case intended to lay down so wide a proposition. All the presumption sections in the Betting Ordinance except s. 8 contain a reference to "a place entered under this Ordinance". My reasons are as follows:

In *Lee Ching Seng v. Public Prosecutor* [1954] 20 MLJ 181 His Lordship Buhagiar J at pp. 181 and 182 said:

> There is no evidence that there was written information on oath as provided by section 16 of the Common Gaming Houses Ordinance 1953 or that the entry and search was affected as a result of a search warrant issued as provided by section 18(1) of the said Ordinance or that in default of such warrant, any of the circumstances set out in paragraphs (a), (b), (c) and (d) of the same subsection were fulfilled.
>
> The first ground of appeal was that in default of such evidence the presumption under section 19 of the said Ordinance cannot arise. I agree with this submission. That presumption can arise only when premises have been entered under the Ordinance. Before the presumption can arise there must be proof of how the entry was made.
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> ...
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> ...
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> But the mere fact that there is no evidence of entry "under the Ordinance" does not prevent evidence of the finding of instruments or appliances of gaming found therein being given and a conviction obtained; the absence of such evidence only prevents the presumption that a house is a gaming house arising so that the onus of proving this by evidence remains on the prosecution.

In *Wong Liang Nguk (f) v. Public Prosecutor* [1953] 19 MLJ 246 His Lordship Thomson J at pp. 247 and 248 said:

> The second point with which I wish to deal is this. When the appellant's car was stopped and searched, it is admitted that the Police Officer who did so was not entitled to do so by any of the provisions of the Common Gaming Houses Enactment. He claimed, probably rightly, to be entitled to do so by virtue of the provisions of the Police Ordinance but it was argued that as he did not search in accordance with the provisions of the Common Gaming Houses Enactment the articles which he found, the three books, were not admissible in evidence in a prosecution under that Enactment.

This is wrong. Generally speaking, (I say generally speaking, because I do not feel it necessary to go into certain difficult questions relating to privilege) the fact that evidence is unlawfully obtained does not affect its admissibility (See Taylor on Evidence, 11th Ed. para. 922). If the Police Officer in this case had no authority to search then no doubt he would have been open to some sort of civil action but the question of his authority to search is completely irrelevant to the admissibility in evidence of his statement of what he found in the course of that search. That, I think, is abundantly clear as a matter of general principle and in particular relation to this type of case it was accepted as long ago as 1936 by Aitken, J. in the case of *Saminathan v. Public Prosecutor* [1937] MLJ 39.

Sections 16, 17 and 18 of the Common Gaming Houses Enactment serve two purposes.

The first is that they protect any police officer who acts in accordance with them.

The second is that if they are strictly complied with and in the course of a search made under them certain articles are found then the presumptions arise which are set out in sections 19 and 20, though it must be remembered that the presumptions contained in section 11 are clearly not dependant upon compliance with sections 16, 17 or 18.

If, then, sections 16, 17 or 18 is complied with not only is any police officer who acts under it protected but the presumptions in the succeeding section arise. If none of the sections is complied with the police officer must look elsewhere for his protection (which no doubt he will find in the Police Ordinance) and the presumptions in the succeeding sections do not arise, but whether these sections are complied with or not the fact that anything has been found in the possession of an accused person and the thing found itself are admissible in evidence, always provided, of course, they have some connection with the case.

There is no doubt that on the two authorities of *Lee Ching Seng v. Public Prosecutor* [1954] 20 MLJ 181 and *Wong Liang Nguk (f) v. Public Prosecutor* [1953] 19 MLJ 246 cited by me that where a section provides for a presumption in respect of a place entered under the Ordinance, unless the place was entered in accordance with the relevant provisions of the Common Gaming Houses Ordinance (now the Act), the presumption does not arise. Similar consideration apply to the presumptions provided under the Betting Ordinance which also refer to places entered under the Betting Ordinance.

In *Wong Yiap Long's* case, it would appear that there were no other evidence that the place entered was a betting house and the presumption under the Betting Ordinance did not arise thus the learned judge in *Wong Yiap Long's* case held that at the close of the prosecution case, the evidence was incomplete and no *prima facie* case had been made out.

Applying the principles enunciated in the case of *Lee Ching Seng v. Public Prosecutor* [1954] 20 MLJ 181 and *Wong Liang Nguk (f) v. Public Prosecution* [1953] 19 MLJ 246 cited by me to the facts of the instant appeal since the entry to the canteen premises was not entered under the provisions of the Act, the presumption that the canteen premises is "a common gaming house" under s. 19 and 20 of the Act does not apply. Further in the instant appeal, the appellant is not charged for an offence under s. 4(1)(a) of the Act that he being the owner or occupier keeps or uses the canteen premises as "a common gaming house" as such the presumptions under s. 19 and 20 of the Act would not come into play.

The prosecution also need not prove that the canteen premises is "a common gaming house".

Further, in my view, the case of *Wong Yiap Long v. Public Prosecutor* [1955] 21 MLJ 132 does not affect the construction of s. 11(1) of the Act which refers neither to a place nor any entry and provides simply that a person found in possession of certain documents shall be presumed until the contrary is proved to be assisting in a public lottery then in progress.

It is the possession, irrespective of place, which raises the presumption under this section. I am fortified in my view for in *Wong Liang Nguk (f) v. Public Prosecutor* [1953] 19 MLJ 246 His Lordship Thomson at p. 247 said:

> ... then the presumptions arise which are set out in sections 19 and 20, though it must be remembered that the presumptions contained in section 11 are clearly not dependent upon compliance with sections 16, 17 or 18.

The prosecution evidence is that at about 11.50a.m. on 15 August 1994 ASP Wong Chee Keong (PW1) together with Cpl. Khor Hay Seng (PW4) and L/Cpl. Chia Kim Hin went to canteen Dewan Masyarakat Kapit. At p. 9 of the appeal record PW1 said:

> On arrival at Canteen Dewan Masyarakat Kapit I identified myself as Police Officer to Mr. Teo Kun Huat (Accused). We entered through the main door of the canteen. Upon our entry, I found the accused sitting at the canteen ...
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> ...
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> Beside this accused's person, there was a woman which I believed was the accused's wife. She was taking care of children. After that I made bodily search on accused and I instructed L/C Khor to conduct search at the counter.

According to PW1 he found one booklet (P1) in the pocket of accused's short pants. He found the wallet containing RM5,670 (P2) in the accused's pocket. Also in the pocket of his shirt, one piece of paper with some figures [P3(b)] and some money of RM3,000 [P3(a)] were found.

In cross-examination PW1 agreed that the canteen he was talking about sells food and drinks for members of the public. He did not record the name of the woman.

At p. 14 of the appeal record, PW1 was cross-examined as follows:

Q. : You did not find any pen?

A : Not necessarily for me to seize the pen if it was there, I can't recall whether I found any pen.

Q. : Put, exhibit P1 was found from the counter?

A : No. I disagree.

Put Q: Exh. P3(b) - piece of paper was taken from the counter?

A : No, I disagree

D/Cpl. Khor Hang Seng (PW4) at pp. 23 and 24 of the appeal record testified as follows:

> ... And when we entered in the premises of the canteen I saw the Chineseman sitting at the counter and I identified myself as police officer by showing warrant card. The man is Mr. Teo Kun Huat, I can still recognise him. He is in accused's dock. (Accused identified).
>
> The accused was writing something at the counter and when we identified ourself and asked him not to move. I did a search at the counter of the canteen. From the search that carried out, I found 3 booklet (P4, P5 and P6), one record book of result (P7) and 9 pieces of paper which have written number on it (P8).
>
> I saw Chief Inspector Wong did a search on accused's body and he recovered some document and some money which I have no idea how much it was. I passed the exhibit which I found to Chief Inspector Wong.

In the case of *Chean Siong Guat v. Public Prosecutor* [1969] 2 MLJ 63 His Lordship Abdul Hamid J (as he then was) at pp. 63 and 64 said:

> Discrepancies may, in my view, be found in any case for the simple reason that no two persons can describe the same thing in exactly the same way. Sometimes what may appear to be discrepancies are in reality different ways of describing the same thing, or it may happen that the witnesses who are describing the same thing might have seen it in different ways and at different times and that is how discrepancies are likely to arise. These discrepancies may either be minor or serious discrepancies. Absolute truth is I think beyond human perception and conflicting versions of an incident, even by honest and disinterested witnesses, is a common experience. In weighing the testimony of witnesses, human fallibility

> in observation, retention and recollection are often recognised by the court. Being a question of fact, what a magistrate need do is to consider the discrepancies and say whether they are minor or serious discrepancies. If, after considering the discrepancies, a magistrate finds that the discrepancies do not detract from the value of the testimony of the witness or witnesses, it would then be proper for him to regard the discrepancies as trivial and ignore them. On the other hand, if a magistrate finds that the discrepancies relate to a material point which would seriously affect the value of the testimony of the witness or witnesses, then it would be his duty to weigh the evidence carefully in arriving at the truth.

The fact that PW1 did not testify that he had seen the appellant writing can be due to the fact that he did not see the appellant writing. It could be due to the fact that PW1 might have seen the actions of the appellant in different ways and at different times as that of PW4. In my view, this is a minor discrepancy.

Further as regards the recovery of P4, P5, P6, P7 and P8 at the counter there was no discrepancy that P4, P5, P6, P7 and P8 were not recovered from the counter. Therefore the learned magistrate was correct in not applying the case of *Public Prosecutor v. Lee Eng Kooi* [1993] 2 CLJ 354. The learned magistrate was correct that the discrepancy between the evidence of PW1 and PW4 was a minor difference.

In p. 14 of the appeal record PW1 was cross-examined as follows:

Q. : Put exh. P1 was found from the counter?

A. : No. I disagree.

Put Q: Exh. P3(b) - piece of paper was taken from the counter?

A. : No. I disagree.

The aforesaid questions were put for the purpose of testing the credibility of PW1.

It is clear that PW1 has denied the suggestions that P1 and P3(b) were found from the counter. PW1 had not been shakened in cross-examination. Further the questions put are not statements of facts as no evidence has been adduced that P1 and P3(b) were recovered from the counter. Thus, I am of the view that the testimony of PW1 that he recovered P1 and P3(b) from the person of the appellant should be accepted as true.

From the evidence of PW1 it is clear that one booklet (P1) was recovered from the pocket of the appellant's short pants and one piece of paper with some figures [P3(b)] was recovered from the pocket of the appellant's shirt.

The learned magistrate in his decision at p. 51 of the record of appeal said:

> In my view, it is clear that the accused had in possession exhibit P1 because it was found from the left pocket of the accused's part. Exhibit P3(b) was also found from the accused's left shirt pocket.

So, I am of the view that the learned magistrate had come to the correct finding that exhs. P1 and P3(b) were recovered from the person of the appellant and that the appellant had possession of exhs. P1 and P3(b).

I shall next deal with the issue whether the appellant had possession of exhs. P4, P5, P6, P7 and P8.

There was no evidence adduced by the prosecution as to who is the owner of the said canteen or the tenant or occupier of the said canteen premises. Further the prosecution adduced no evidence to show the relationship of the appellant with the business of the canteen. So there is no evidence that the appellant is the owner of the said canteen or is the occupant or tenant of the said canteen premises. As such, there is no nexus between the appellant and the exhs. P4, P5, P6, P7 and P8 found at the counter. So the prosecution has not proved that P4, P5, P6, P7 and P8 were found in the possession of the appellant.

Since P1 and P3(b) were found in the possession of the appellant, the court has to decide whether exh. P1 and P3(b) are lottery tickets and/or documents of "any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery."

Chief Inspector Tan Loon Tack (PW2) testified as an expert witness. In p. 17 of the appeal record he stated that P1 - (202401-203410) contain 32 4D numbers dated 15 August 1994 (Monday) with a total of 92 tickets (203411-203450) not written with anything. P3(b) - statement of account - 4D activities. At p. 18 of the appeal record PW2 said:

> After examined all the above exhibits in my opinion exhibits P1 and P4 are carbon copies of betting slip of illegal 4D lottery which based on Magnum draw on 15.8.94 in which total of 95 number with total 926 tickets were recorded.

PW2 has not explained how he came to the conclusion that P1 contain 32 numbers with a total of 92 tickets. He has not explained what he meant by 32 numbers. He has not enumerated what were the 32 numbers. Does it mean that each of the 32 numbers contain four digit numbers each? What is more confusing is how did he conclude that there were 92 tickets. He has also not given evidence what were the 4-digit numbers for each of the 92 tickets. He has also not stated what were the amounts staked for each of the 92 tickets. He has also not stated whether the 92 tickets were based on the big or small bet. In my view, he has not given reasons for this opinion.

In respect of P1 he was of the opinion that this is a carbon copy of betting slip of illegal 4D lottery. Again he has not given any reasons for this opinion.

In respect of P3(b) he merely stated that P3(b) is a statement of account - 4D activities. He has not explained what were the contents in P3(b) such as whether there were 4-digit numbers and what were the amounts staked for each 4-digit number. He has also not explained in P3(b) whether there were 4-digit numbers staked on either the big or small bet. In fact, he has not given any reason why P3(b) is a statement of account - 4D activities.

From the testimony of PW2, it is clear that PW2's evidence as a gaming expert was wanting. He has not given any reason or explanation for his opinion. As the expert (PW2) had given no reasons for his conclusions, the learned magistrate was in no position to judge whether the evidence of the expert was in fact acceptable.

I am of the view that the expert evidence was not adequate to enable the learned magistrate to form his own judgment that exhs. P1 and P3(b) were lottery tickets and/or that they were documents of "any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery." (See *Wong Wiew Hock v. Public Prosecutor* [1997] 3 CLJ 255). Therefore the prosecution has not proved beyond reasonable doubt that P1 and P3(b) are lottery tickets and/or are documents of any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery". As P1 and P3(b) were not proved to be lottery tickets and/or documents of any account, memorandum, riddle or record of stakes or wagers in or relating to a lottery the presumption under s. 11(1) of the Act that the appellant is "assisting in a public lottery then in progress" does not arise.

As such, at the close of the prosecution case, the appellant should have been acquitted and discharged without his defence being called.

In view of the foregoing, the appeal is allowed, the conviction and sentence quashed. The fine, if paid, is to be refunded to the appellant.